

N-322

(REV. 2003)

**APPLICATION FOR A QUALIFIED HIGH TECHNOLOGY BUSINESS (QHTB)
TO SELL ITS UNUSED NET OPERATING LOSS (NOL) CARRYOVER**

Name of taxpayer

Address of taxpayer

Hawaii G.E./Use I.D. No.

Federal Employer I.D. No. or Social Security No.

Enter loss years and amounts of NOL to be sold

Year ended	Amount of NOL
1. _____	\$ _____
2. _____	\$ _____
3. Total NOL requested to be sold	\$ _____

ATTACH A COPY OF THE QHTB'S STATEMENT(S) OF ASSETS, LIABILITIES, AND STOCKHOLDERS' EQUITY AND STATEMENT(S) OF REVENUES, EXPENSES, AND RETAINED EARNINGS (INCOME TAX BASIS) PREPARED IN ACCORDANCE WITH STATEMENTS ON STANDARDS FOR ACCOUNTING AND REVIEW SERVICES ISSUED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS FOR THE APPLICABLE YEAR(S) OF THE NET OPERATING LOSS(ES) BEING SOLD.

	YES	NO	N/A
1. Is the sales price of the NOL to be sold at least 75% of the surrendered tax benefit computed under section 235-71, HRS, had the NOL been used by the selling QHTB?	<input type="checkbox"/>	<input type="checkbox"/>	
2. Is the total amount of all NOLs to be sold by the QHTB during the QHTB's tax year equal to \$500,000 or less?	<input type="checkbox"/>	<input type="checkbox"/>	
3. Is the "for sale" NOL incurred by the QHTB within the QHTB's previous two tax years?	<input type="checkbox"/>	<input type="checkbox"/>	
4. Did the selling QHTB have a net loss in both of its two previous full years of operations as determined on its financial statements?	<input type="checkbox"/>	<input type="checkbox"/>	
5. Was the selling QHTB's ratio of operating revenues to operating expenses 110 % or less in both of its two previous full years of operations as determined on its financial statements?	<input type="checkbox"/>	<input type="checkbox"/>	
6. Is the selling QHTB part of a consolidated group of affiliated corporations, for federal income tax purposes, that had an aggregate net loss for both of the two previous full years of operations as determined by its financial statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Did any corporation who owned at least 50% of the selling QHTB, whether directly or indirectly, have a net loss in both of the two previous full years of operations as determined by its financial statements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Has any Hawaii tax benefit been received by a partner, limited partner, member or shareholder selling their distributive share of the QHTB's NOL? If the answer is "No" for the partner(s), limited partner(s), member(s) or shareholder(s) selling their share of the NOL, then fill-in the CERTIFICATION section below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DECLARATION

I declare, under the penalties set forth in section 231-36, HRS, that the information contained above has been examined by me, and, to the best of my knowledge and belief, is true and correct.

Signature of Taxpayer or Authorized Agent

Date

Type or Print Name

Type or Print Title (Owner, Partner or Member, Officer, or Duly Authorized Agent)

**CERTIFICATION BY PARTNERS, LIMITED PARTNERS, MEMBERS, OR SHAREHOLDERS
SELLING THEIR SHARE OF NET OPERATING LOSSES**

I (we) certify, under the penalties set forth in section 231-36, HRS, that Hawaii tax benefits have not been received for the distributive share of net operating losses of the QHTB named above.

List of Partners, Limited Partners, members, or shareholders (Attach a separate sheet if more space is needed)

Name	Address	Signature	SSN or FEIN	Amount of NOL being sold by partner ltd ptr, member, or shareholder
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTAL _____ **\$** _____

FOR OFFICIAL USE ONLY

Application to sell NOL carryover is ☐ approved ☐ disapproved

Signature

Date

Title

THIS SPACE FOR DATE RECEIVED STAMP

GENERAL INSTRUCTIONS

A qualified high technology business (QHTB) as defined in section 235-7.3, Hawaii Revised Statutes (HRS), may apply to the Department to sell its unused net operating loss (NOL) carryover to another taxpayer. If approved by the Department, a QHTB may sell its unused NOL carryover to another taxpayer in an amount equal to at least seventy-five percent of the amount of the surrendered tax benefit, computed at the corporate rate pursuant to section 235-71, HRS, provided that the QHTB may sell no more than \$500,000 of its unused NOL carryover to another taxpayer per year. The tax benefit purchased by the buyer shall be claimed in the year for which the sale is approved by the Department.

Any use of the purchased NOL carryover for tax carryback or carryforward purposes shall comply with applicable law. The income from the sale of the NOL carryover received by the seller shall be reported on its tax return in the taxable year received but shall not be considered taxable income.

No application for the sale of unused NOL carryover shall be approved if the QHTB:

- (1) Has demonstrated positive net income in either of the two previous full years of ongoing operations as determined on its financial statements;
- (2) Has demonstrated a ratio of one hundred ten per cent or greater of operating revenues divided by operating expenses in either of the two previous full years of operations as determined on its financial statements; or
- (3) Is directly or indirectly at least fifty per cent owned or controlled by another corporation that has demonstrated positive net income in either of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliate corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net income in either of the two previous full years of ongoing operations.

In the case of partnerships, limited liability partnerships, limited liability companies classified as partnerships, and S corporations, each partner, member, or shareholder may sell its share of the entity's total NOL. The application for the sale of unused NOL carryover shall only be approved to the extent that all partners, members, or shareholders certify that they have not received a tax benefit from the losses.

The sale of a NOL carryover applies only to a NOL incurred by a QHTB after December 31, 2000, but before January 1, 2004.

The time limits for a NOL carryback and carryforward under Internal Revenue Code section 172 for the purchaser of an NOL shall begin running from the date that the purchaser purchases the NOL from the QHTB.

Definitions:

"Net operating loss" means a NOL for income tax purposes occurring in the two taxable years preceding the year in which the sale of NOL carryover occurs.

"Surrendered tax benefit" means the tax liability saved if the NOL carryforward could have been used by the QHTB.

SPECIFIC INSTRUCTIONS

Question 1. — The tax rates under section 235-71, HRS, are as follows:

- 4.4 percent of the taxable income is not over \$25,000 (4.4 percent X taxable income);
- 5.4 percent if over \$25,000 but not over \$100,000 (5.4 percent X taxable income, minus \$250);
- and on all over \$100,000 (6.4 percent X taxable income, minus \$1,250).

Question 8. — If the QHTB is a partnership, limited liability partnership, limited liability company classified as a partnership or a S corporation, the partner(s), limited partner(s), member(s) or shareholder(s) selling their respective share of the NOL must certify that they have not received any Hawaii tax benefit on their share of the NOL. The CERTIFICATION section of Form N-322 must be filled-in, including the signature of each partner, limited partner, member, or shareholder selling their share of the NOL.

Where To Send Form

State of Hawaii
Department of Taxation
Attn: Technical Section
P. O. Box 259
Honolulu, HI 96809-0259

Processing Time: Processing of Form N-322 will take approximately 6 to 8 weeks from the date the form is received by the Department of Taxation.